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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

**SAMUEL LASSOFF, on behalf of  
himself, and other U.S. residents si**

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## CIVIL ACTION

**Plaintiffs,**

V.

## **MICROSOFT CORPORATION**

**Defendant.**

FILED  
JAN 19 2010  
MICHAEL E. KUNZ  
By

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## CLASS ACTION COMPLAINT

Plaintiffs make the following allegations, except as to allegations specifically pertaining to plaintiffs and plaintiffs' counsel, based upon the investigation undertaken by plaintiffs' counsel, which investigation included analysis of publicly-available news articles and reports, public filings, press releases and other matters of public record.

## **NATURE OF THE ACTION**

1. This is a class action on behalf of several million U.S. customers exposed to point fraud following fraud, breach of contract, negligence, unjust enrichment, and unfair business practices on the part of the defendant Microsoft Corporation.

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action and venue is proper in this District.

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**PARTIES**

3. Plaintiff Samuel Lassoff is a resident of Montgomery County, Pennsylvania. Mr. Lassoff was a customer of defendant Microsoft Corporation's Microsoft Points system, X-box Live, Xbox Live Marketplace, Windows LIVE, Xbox 360, and Zune services when his account was exposed to point fraud.

4. Defendant Microsoft is a corporation organized under the laws of the State of Washington, with its principle place of business in Redmond, Washington. Microsoft Corporation is a worldwide developer of software and services and provides an online, renewable, stored-value system called Microsoft Points that lets people buy digital goods and services from Microsoft services such as X-box Live Marketplace, Windows LIVE, Xbox 360, and Zune throughout the United States. Purchasers of such Microsoft Point system, X-box Live, Windows LIVE, Xbox 360, and Zune services presumptively include citizens of every state in the United States.

5. Defendant Microsoft Corporation is liable for its fraudulent handling of plaintiffs' Microsoft Point system, X-box Live, Windows LIVE, Xbox 360, and Zune accounts and for a failure to immediately warn Plaintiff of its fraud. Defendant Microsoft Corporation also received and retained money paid by the Plaintiff in response to incomplete and or partial downloads of digital goods and services.

**PLAINTIFF'S CLASS ACTION ALLEGATIONS**

6. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of U.S. customers whose Microsoft Point system, X-box Live, Xbox Live Marketplace, Windows LIVE, Xbox 360, and Zune accounts were fraudulently and or negligently handled by Defendant between January 1st, 2002 through April 30th, 2010, inclusive (the "Class Period"), and who were damaged thereby. Excluded from the Class are Defendant, members of the immediate family of Defendant, any subsidiary or affiliate of Defendant and the directors, officers and employees of Defendant or its subsidiaries or affiliates, or any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any excluded person.

7. The members of the class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiffs at this time and can only be ascertained through appropriate discovery, plaintiffs believe that there are hundreds of members of the Class located throughout the United States. U.S. customer members of the Class may be identified from records maintained by defendants and/or its transfer agents and may be notified of the pendency of this action by mail, using a form of notice similar to that customarily used in class actions.

8. Plaintiff's claims are typical of the claims of the other members of the Class as all members of the Class were similarly affected by Defendants' wrongful conduct.

9. Plaintiff will fairly and adequately protect the interests of the members of the Class.

10. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- ✓ whether the defendant committed fraud against the plaintiffs
- ✓ whether defendant negligently handled plaintiffs' Microsoft Point system, X-box Live, Windows LIVE, Xbox 360, and Zune account
- ✓ whether defendant failed to adequately protect plaintiffs once it discovered plaintiffs' account was fraudulently charged
- ✓ whether defendant participated in and pursued the common course of conduct complained of herein
- ✓ whether statements made by defendant to the public during the Class Period misrepresented and/or omitted to disclose material facts about the negligent mishandling of plaintiffs' Microsoft Point system, X-box Live, Windows LIVE, Xbox 360, and Zune account
- ✓ whether defendant made material misrepresentations and or failed to correct the material misrepresentations; and
- ✓ the extent to which the members of the Class have sustained damages and the proper measure of damages.

11. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this suit as a class action.

**SUBSTANTIVE ALLEGATIONS**

12. In January 2010, plaintiff received invoices regarding his Microsoft Points purchases, where it was discovered that plaintiff was the victim of Microsoft Point fraud.

13. In an attempt to rectify the situation, plaintiff contacted defendant Microsoft Corporation Xbox Live Customer Support numerous times via telephone, with no response from the defendant.

14. In an attempt to correct his credit account, plaintiff had to spend several hours contacting his credit card company to appeal the charges, which ultimately led to litigation.

15. The foregoing required tasks were extremely burdensome and time consuming for plaintiff to complete and required over 15 attorney hours over several days.

16. The defendant engaged in a scheme to unjustly enrich itself through their fraudulent handling of plaintiffs' account. The defendant never warned the plaintiffs of point fraud due to incomplete and or partial downloads or made any recovery efforts for the plaintiffs.

**COUNT I**

**FRAUD**

17. Microsoft Corporation's conduct in illegally charging Plaintiff and the class for point fraud, as alleged hereinabove, violated Pennsylvania, New Jersey, and Federal law because it was unlawful, unfair and/or fraudulent business act and practice.

18. As a proximate result of Microsoft Corporation's conduct alleged herein, both Plaintiff and the class have sustained pecuniary loss.

19. Unless restrained by this Court, Defendant Microsoft Corporation will continue to engage in the unlawful, unfair, and/or fraudulent business acts or practices alleged above, in violation of Pennsylvania, New Jersey, and Federal law thus tending to render judgment in the instant action

ineffectual. Plaintiff has no adequate remedy at law, in that Defendant will continue to engage in such practices, as alleged above, in violation of Pennsylvania, New Jersey, and Federal law thus engendering a multiplicity of judicial proceedings.

20. Plaintiff and the Class are entitled to the disgorgement of any profits Microsoft Corporation obtained as a result of charging Plaintiff and the Class for point fraud, restitution of any monies Plaintiff and the Class paid for incomplete and or partial downloads that could be determined fraudulent and attorneys' fees as provided by Pennsylvania, New Jersey, and Federal law.

**COUNT II**

**BREACH OF Contract**

21. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

22. Defendants either expressly and/or implicitly, contractually agreed to provide an online, renewable, stored-value system called Microsoft Points that lets Plaintiffs buy digital goods and services from X-box Live Marketplace, Windows LIVE, Xbox 360, and Zune and only charge Plaintiffs for the complete, whole and or actual digital goods and services purchased by Plaintiffs. Defendant breached that contract by collecting revenues for digital goods and services which were not provided. Accordingly, Plaintiffs seek a refund of all improper and/or illicit charges.

23. Defendants, by their negligent handling of Microsoft Point control, X-box Live Marketplace, Windows LIVE, Xbox 360, and Zune accounts, breached their contract to plaintiff and the Class, causing damages to Plaintiff and the Class.

**COUNT III**

**NEGLIGENCE**

24. Plaintiff repeats and realleges each and every allegation contained above.

25. The Defendant owes and owed a duty to plaintiff and the Class to monitor its online, renewable, stored-value system called Microsoft Points for point fraud and to protect plaintiff and the Class from point fraud to ensure that Plaintiff and the Class were charged only for complete, whole and or actual digital goods and services purchased by Plaintiffs.

26. Microsoft Corporation has breached its duty to plaintiff and the Class to adequately monitor its Microsoft Point system for point fraud and to protect plaintiff and the Class from point fraud, and by charging plaintiff and the Class for incomplete and or partial downloads of digital goods and services; and refusing to refund same.

**COUNT IV**

**UNJUST ENRICHMENT**

27. Plaintiff repeats and realleges each and every allegation contained above.

28. Microsoft Corporation has received and retained money belonging to plaintiff and the Class resulting from incomplete and or partial downloads of digital goods and services. Plaintiffs have a right to own and or rent, view and or download and fairly use these digital goods and services in accordance with their various purchased copyrights from Microsoft and other providers. A common issue among the Plaintiffs is that each Plaintiff did not get what they paid for; and Plaintiffs were refused any kind of refund after notifying and or contacting Microsoft Corporation of same.

29. Under principles of equity and good conscience, Microsoft Corporation should not be permitted to retain the money belonging to Plaintiff and the Class which Microsoft Corporation has unjustly received as a result of its actions.

**COUNT V**

**UNFAIR BUSINESS PRACTICES**

30. Plaintiff repeats and realleges each and every allegation contained above.

31. Microsoft Corporation's conduct in charging Plaintiff and the class for point fraud, as alleged hereinabove, violated Pennsylvania, New Jersey, and Federal law because it was unlawful, unfair and/or fraudulent business act and practice.
32. As a proximate result of Microsoft Corporation's conduct alleged herein, both Plaintiff and the class have sustained pecuniary loss.
33. Unless restrained by this Court, Defendant s Microsoft Corporation will continue to engage in the unlawful, unfair, and/or fraudulent business acts or practices alleged above, in violation of Pennsylvania, New Jersey, and Federal law thus tending to render judgment in the instant action ineffectual. Plaintiff has no adequate remedy at law, in that Defendant will continue to engage in such practices, as alleged above, in violation of Pennsylvania, New Jersey, and Federal law thus engendering a multiplicity of judicial proceedings.
34. Plaintiff and the Class are entitled to the disgorgement of any profits Microsoft Corporation obtained as a result of charging Plaintiff and the Class for point fraud, restitution of any monies Plaintiff and the Class paid for incomplete and or partial downloads and attorneys' fees as provided by U.S., Pennsylvania, New Jersey, and Federal law.

**WHEREFORE**, plaintiff prays for relief and judgment, as follows:

1. Determining that this action is a proper opt-out class action and certifying Plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure;
2. Awarding compensatory damages in favor of Plaintiff and the other Class members against defendant, jointly and severally, for all damages sustained as a result of defendant's wrongdoing, in an amount to be proven at trial, including interest thereon;
3. Pre-judgment interest and post judgment interest from the date of entry until the date of satisfaction at the highest rates allowable by law;
4. Punitive and exemplary damages to the extent permitted by law;
5. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including attorneys fees and expert fees; and
6. Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: January 19, 2010

By: Samuel J. Lassoff /s

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Attorney for Plaintiffs